

UNITED STATES COURTS  
SOUTHERN DISTRICT OF TEXAS  
FILEDIN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

FEB 26 2001 AM

Michael N. Milby, Clerk

CHARLES DOUGLAS RABY

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MC 01 03 8

v.

NO. \_\_\_\_\_

GARY L. JOHNSON, DIRECTOR  
TEX. DEPT. OF CRIMINAL JUSTICE  
INSTITUTIONAL DIVISIONS  
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S

H- 02-0343

MOTION FOR APPOINTMENT OF COUNSEL

1. Movant Charles Douglas Raby, pursuant to 21 U.S.C. § 848(B), moves the Court for the appointment of an attorney to represent him on a petition for writ of habeas corpus; on appeal should the Court deny the relief requested, or should the Court grant the relief requested and should the Director appeal; on petition for writ of certiorari to the United States Supreme Court; and on all related matters itemized in 21 U.S.C. § 848(8).

2. Movant intends to seek habeas corpus relief pursuant to 28 U.S.C. § 2254 from a conviction for capital murder and a sentence of death in cause No. 9407130 in the 248th District Court of Harris County, Texas.

3. The Texas Court of Criminal Appeals affirmed movant's conviction and sentence of death on direct appeal in a published opinion delivered on March 4, 1998, and denied his motion for rehearing on April 22, 1998. The same court on January 31, 2001, denied movant the relief requested in his application for writ of habeas corpus filed pursuant to Texas Code of Criminal Procedure article 11.071.

4. Movant is indigent, and can not afford the services of an attorney. Filed simultaneously herewith is his application to proceed in forma pauperis.

5. 21 U.S.C. § 848(B) provides as follows:

In any post conviction proceeding under section 2254 or 2255 of Title 28, seeking to vacate or set aside a death sentence, any defendant who is or becomes financially unable to obtain adequate representation or investigative, expert, or other reasonably necessary services shall be entitled to the appointment of one or more attorneys and the furnishing of such other services in accordance with paragraphs (5), (6), (7), (8), and (9).

On its face, this statute grants indigent capital defendants a mandatory right to qualified legal counsel and related services in any federal post conviction proceeding. *McFarland v. Scott*, 114 S.Ct. 2568, 2571 (1994).

6. Undersigned counsel James F. Keegan was appointed by the Texas Court of Criminal Appeals to represent movant on his application for writ of habeas corpus filed pursuant to Texas Code of Criminal Procedure article 11.071, and is prepared and willing to represent movant in his federal writ proceedings. Undersigned counsel is admitted to practice before the Court, the United States Court of Appeals for the Fifth Circuit, and the United States Supreme Court, and currently represents a capital murder defendant in federal writ proceedings before the Court, and another capital murder defendant in federal writ proceedings before the United States Court of Appeals for the Fifth Circuit.

7. However, movant has specifically requested that the Court NOT appoint undersigned counsel to represent him.

8. PRAYER. Movant Charles Douglas Raby accordingly prays that the Court appoint an attorney to represent him on a petition for writ of habeas corpus.

Respectfully submitted,  
Charles Douglas Raby  
Movant

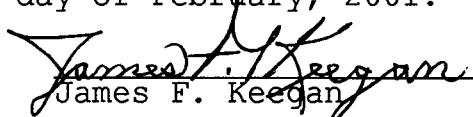
By:   
James F. Keegan  
Texas Bar No. 11155400  
4660 Beechnut  
Suite 216  
Houston, Texas 77096  
713-668-4797  
713-668-4798-facsimile  
Attorney for movant

CERTIFICATE OF SERVICE

A copy of the motion of Charles Douglas Raby for appointment of counsel, along with a copy of his application to proceed in forma pauperis, was served upon Gary L. Johnson by serving

Deni Smith Garcia  
Assistant Attorney General  
Capital Litigation Division  
P.O. Box 12548  
Capitol Station  
Austin, Texas 78711

by first class mail on this the 26th day of February, 2001.

  
James F. Keegan

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CHARLES DOUGLAS RABY

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GARY L. JOHNSON, DIRECTOR  
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INSTITUTIONAL DIVISION

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NO. \_\_\_\_\_

ORDER APPOINTING COUNSEL

Came on this day for consideration the motion of Charles Douglas Raby for appointment of counsel, and the Court, having considered the motion and the accompanying application to proceed in forma pauperis, is of the opinion that the motion should be, and hereby is, in all things GRANTED.

Attorney \_\_\_\_\_ is appointed to represent Charles Douglas Raby on a petition for writ of habeas corpus; on appeal should the Court deny the relief requested, or should the Court grant the relief requested and respondent appeal; on petition for writ of certiorari to the United States Supreme Court; and on all related matters itemized in 21 U.S.C. § 848(8).

Signed on this the \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
United States District Judge